



Kim Hixson

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REP. KIM HIXSON'S TESTIMONY ON SB-275

Good morning, Chairman Coggs and members of the Senate Committee on Labor, Elections and Urban Affairs. Thank you for the opportunity to testify on Senate Bill 275, the Job Seeker Protection Bill.

The national economic crisis has affected residents from our respective districts directly, and we have to do whatever we can to help our unemployed neighbors weather the storm. In my area, the General Motors Assembly Plant closing has left families struggling to stay afloat. Job losses at Harley-Davidson in Milwaukee and Chrysler in Kenosha have left too many hard-working folks without the ability to provide for their families.

This bill was inspired by a constituent of mine who you will hear from shortly. Due to his inability to obtain medical insurance and subsequent catastrophic health care bills, he has acquired significant debt, which has greatly damaged his credit. As a result of his unfortunate credit history, he has been repeatedly denied employment.

Like many Americans who have fallen on tough times, this individual has always been able and willing to work hard, but has been repeatedly denied the chance to prove himself due to his credit history. As a result of his inability to obtain a steady paycheck, his credit cannot improve, leading him down a continuous path of unemployment and greater debt. SB-275 will grant this individual – and others in similar positions – the opportunity to be considered for a job based on merit and not on credit history.

This bill does have an exemption that allows employers to use credit history as a deciding factor for a job application if the circumstances of an applicant's credit history are **substantially related** to the circumstances of a particular job or related activity. Some organizations have expressed concerns about the lack of specificity in this exemption and others have expressed some concern as to whether this exemption would provide some companies with too great of an opportunity to circumvent this bill's legislative intent. I want you to know that Senator Taylor and I have actively worked with legislative colleagues and organizations with vested interests in the scope of this legislation to try to find common ground.

I have made every effort to work toward a compromise to gain support from legislators and organizations with vested interests in this legislation. However, after several discussions with Legislative Council, it became clear that the changes being proposed by interest groups on the "substantially related" provision would significantly alter this bill's legislative intent. That notwithstanding, I still worked tirelessly with legislators and organizations to try to resolve our differences with this legislation. Unfortunately, my calls for bipartisan compromise went unanswered in the Assembly, but Senator Taylor and I look forward to working with all committee members to create reasonable, responsible public policy.

Contrary to the claims made by some organizations, there are no statistics that provide evidence that individuals with poor credit history are more likely to steal or defraud a company. No expert opinion shows any indication of a correlation between credit history and job performance. I believe it is a dangerous assumption that those of us with poor credit history are more inclined to criminal activity.

This is the exact type of discrimination that SB-275 works to address. Poor credit history is a very real problem that will not soon go away.

Take, for example, a recent article from *The Janesville Gazette*, a newspaper that covers much of Rock County, which reports a *36 percent increase* in bankruptcy filings so far this year over last in the county. The assumption that hard-working persons caught in a bad economy pose a higher security risk insults these struggling families forced into bankruptcy but willing to put in the hours to dig themselves out of debt.

Equal opportunity laws are enacted to protect employees against similar prejudices. One only has to look to the recent past to find a time when employers freely discriminated against minorities based on ill-conceived presumptions of incompetence or higher likelihood of criminal activity. We can all agree that this type of stereotyping has no place in the work environment. In much the same way that equal opportunity law protects against discrimination based on race, age and sex, we must eliminate the free consideration of baseless beliefs on individuals with poor credit history during the hiring process.

I am sure that you have all spoken with constituents who are having difficulties finding a job. A recent *New York Times* article addresses the hardships that many job seekers with poor credit must confront. I have included a copy of this article for your review. This bill will eliminate an unfair and unnecessary burden on job seekers and provide a greater sense of fairness for all Wisconsin workers.

This committee is responsible for ensuring that members of Wisconsin's workforce are given a fair and legitimate opportunity to obtain employment, and this legislation helps to address that specific issue by removing an unnecessary hurdle that many job seekers must currently face. Again, Senator Taylor and I are very willing to work with committee members of both parties on this legislation. I look forward to working with Senator Taylor and committee members to make this legislation effective public policy. I would be happy to answer any questions that you may have about this legislation.

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August 7, 2009

Another Hurdle for the Jobless: Credit Inquiries

By **JONATHAN D. GLATER**

Digging out of debt keeps getting harder for the unemployed as more companies use detailed credit checks to screen job prospects.

Out of work since December, Juan Ochoa was delighted when a staffing firm recently responded to his posting on Hotjobs.com with an opening for a data entry clerk. Before he could do much more, though, the firm checked his credit history.

The interest vanished. There were too many collections claims against him, the firm said.

"I never knew that nowadays they were going to start pulling credit checks on you even before you go for an interview," said Mr. Ochoa, 46, who lost his job in December tracking inventory at a mining company in Santa Fe Springs, Calif. "Why would they need to pull a credit report? They'd need something like that if you were applying at a bank."

Once reserved for government jobs or payroll positions that could involve significant sums of money, credit checks are now fast, cheap and used for all manner of work. Employers, often winnowing a big pool of job applicants in days of nearly 10 percent unemployment, view the credit check as a valuable tool for assessing someone's judgment.

But job counselors worry that the practice of shunning those with poor credit may be unfair and trap the unemployed — who may be battling foreclosure, living off credit cards and confronting personal bankruptcy — in a financial death spiral: the worse their debts, the harder it is to get a job to pay them off.

"How do you get out from under it?" asked Matthew W. Finkin, a law professor at the University of Illinois, who fears that the unemployed and debt-ridden could form a luckless class. "You can't re-establish your credit if you can't get a job, and you can't get a job if you've got bad credit."

Others say that the credit check can be used to provide cover for discriminatory practices. Responding to complaints from constituents, lawmakers in a few states have recently proposed legislation that would restrict employers' use of credit checks. While some measures languish, Hawaii has just imposed new restraints.

Business executives say that they have an obligation to be diligent and to protect themselves from employees who may be unreliable, unwise or too susceptible to temptation to steal, and that credit checks are a help.

"If I see too many negative things coming up on a credit check, it's one of those things that raises a flag with

me,” said Anita Orozco, director of human resources at Sonneborn, a petrochemical company based in Mahwah, N.J. She added that while bad credit alone would not be a reason to deny someone a job, it might reveal poor judgment.

“If you see a history of bad decision-making, you don’t want that decision-making overflowing into your organization,” she said.

More than 40 percent of employers use credit checks at least sometimes, according to a 2004 survey by the Society for Human Resource Management, up from 25 percent in 1998. The share has almost certainly risen today, say career counselors.

“It has been an ongoing and increasing issue,” said Mollie de Rojas, district coordinator for the local operations of the Ohio Department of Job and Family Services.

Credit counselors, worker advocates and the unemployed contend that a credit check is not always relevant to hiring decisions.

“There’s no relationship between being a personal trainer making \$12 an hour” and having a good credit history, said Janet L. Newcomb, a career counselor in Huntington Beach, Calif. “People are being turned down for jobs on the basis of things that really have nothing to do with qualifications.”

That is the complaint of Kevin Palmer, 49, who for months lived at the same homeless shelter in Santa Ana, Calif., as Mr. Ochoa. After an interview that seemed to go well one day in June at a property management company, a manager walked him around the office the next day, introduced him to other employees and showed him an available desk.

A credit check later, the offer vanished.

It was “a glorified clerk’s job, taking homeowners’ complaints,” Mr. Palmer said of the opportunity, which paid about \$39,000 and could have gotten him back on his feet after losing his condominium to foreclosure and filing for bankruptcy.

Last month, he says he found a job at a property management company in San Francisco — a company that did not run a credit check on him.

It is generally legal to run credit checks on job applicants, but some states have restrictions. In Washington, which has perhaps the most stringent requirement, a candidate’s credit history must be substantially related to the job under a law that took effect in 2007.

Last month, lawmakers in Hawaii approved a measure that generally allows an employer to review a credit history only after making an offer and requires the credit check to be “directly related” to job qualifications.

In California, Gov. Arnold Schwarzenegger vetoed a similar law. (New York law requires a background check’s findings to be related to the job, but it addresses criminal records and does not mention credit checks.)

Lawmakers in Michigan and Ohio have proposed barring employers from using credit history in making

employment decisions.

"In my opinion, it's discrimination," said Representative Jon Switalski, the Democrat who proposed legislation in Michigan. "If you miss a few payments or you have medical debt, your skills as a pipefitter or an electrician don't diminish."

Courts have not been sympathetic to claims that discrimination is being cloaked in credit checks, said Angela Onwuachi-Willig, a law professor at the [University of Iowa](#). "At what point does the fact that someone lives in a particular neighborhood or someone has a bad credit score become a way of eliminating people for illegal grounds?" she asked rhetorically. "Basically, the courts don't protect against proxy discrimination."

Stuart J. Ishimaru, the acting chairman of the federal [Equal Employment Opportunity Commission](#), said the commission would probably issue guidance on the proper use of credit checks. Such guidance, though nonbinding, could offer some reassurance against lawsuits to employers who comply.

"It's something that intrigues us and worries us," Mr. Ishimaru said, adding that some job-related tests had led to discrimination claims in the past. "The question is, why do you use it? How is this a good screening device?"

Federal law requires employers to get the consent of job applicants before running credit checks, said Pamela Q. Devata, a lawyer in the Chicago office of Seyfarth Shaw.

And if they are considering denying someone a job based on a check, she said, "they have to notify the applicant." That is intended to give someone a chance to explain circumstances or spot erroneous information.

When the job market improves and fewer people are fighting for slots, credit histories may become less important, said Michael C. Lazarchick, a career counselor in Pleasantville, N.J. "But these are lean and mean times."

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December 14, 2009

Senator Spencer Coggs
Chair
Senate Committee on Labor, Elections
and Urban Affairs
Wisconsin State Capitol
Madison, WI 53703

Re: Statement in Opposition to SB 275

Dear Senator Coggs and Members of the Committee:

The Midwest Equipment Dealers Association ("MEDA") appreciates the opportunity to address SB 275. MEDA is a trade association comprised of retailers of farm, construction, industrial and outdoor power equipment dealerships throughout Wisconsin. Most of MEDA's members are relatively small employers with less than fifty employees.

While MEDA understands the concerns addressed in SB 275, it is opposed to the legislation. The Wisconsin Fair Employment Act ("WFEA") already provides 13 bases of prohibited employment discrimination and SB 275 would add one more. Small Wisconsin employers are already subject to numerous discrimination actions. SB 275 would provide one more cause of action under which disgruntled or disappointed employees can bring an employer into legal proceedings. With the passage of 2009 Wisconsin Act 20 earlier this year, employees can claim not only back pay, but compensatory and punitive damages as well. Even though many complaints filed under the WFEA lack merit, they are costly to employers as employers often settle to avoid legal expenses and potential risks. Creating new causes of action under the WFEA is also costly to the state as each claim requires assignment to a state investigator and hearing before a state administrative law judge. Investigations and hearings are an expense with every filing. This is especially so since this law duplicates existing federal law.

Unlike discrimination because of race, sex, creed and national origin, MEDA does not believe that discrimination based upon credit history is as pervasive and in need of inclusion in the WFEA. Further, this is an area already addressed by Congress in the Fair Credit Reporting Act ("FCRA"). The FCRA is a very detailed law which regulates who may access credit reports and disclosure when reports have been used. Under the FCRA, Congress has provided that employers may access credit reporting information on prospective employees during the employment process. (15 U.S.C. § 1681B) Passage of SB 275 would provide a situation to

employers where the federal government says the information is legal and the state says it is illegal. If credit reporting information is not proper in employment situations, Congress should simply eliminate access of employers to such reports under the FCRA. Having opposing positions between the federal and state governments only serves to add to confusion faced by employers.

While permitting employer access to credit reports, the FCRA regulates access and already provides employee protections:

1. Employers must notify prospective employees that credit reports may be obtained and employees must consent to such use.
2. If an employer makes an adverse employment decision based upon a credit report, the employer must advise the employee or prospective employee of the reason for the adverse action.
3. If an adverse action is taken, the employee is entitled to a copy of the credit report used.
4. If a report is improperly used or notice of adverse action is not provided, the FCRA provides substantial penalties.

The FCRA provides for knowledge and transparency to employees. Because of the significant federal regulations, relatively few Wisconsin employers look at credit reports unless there is a specific reason. MEDA simply does not believe there is a significant problem.

MEDA believes that the use of credit reports in employment is already well regulated under the FCRA. Abuses by employers are subject to significant penalties. MEDA does not believe it is necessary to add credit reporting issues to the WFEA at this time and that doing so will cause confusion to employers and unnecessary litigation.

Thank you for this opportunity to be heard.

Sincerely,

Gary L. Antoniewicz
MEDA Legal Counsel

Equifax Talking Points
Wisconsin S.B. 275
Committee on Labor, Elections and Urban Affairs
December 15, 2009

Introduction

Chairman Cogg and members of the Committee, My name is Julie Long and I am a Sr. Director of State Government Relations for Equifax Inc. Equifax is headquartered in Atlanta, Georgia and employs approximately 7,000 people throughout North America, Latin America and Europe.

Businesses have relied on Equifax for over 100 years to provide risk management products to retailers, banks, mortgage brokers, employers and many other businesses.

Equifax is a consumer reporting agency as defined and regulated by the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq.

On behalf of Equifax, I thank you for the opportunity to appear before the Committee today to share my company's perspective on S.B. 275.

Issue

Senate Bill 275 creates a ban in using an individual's credit history unless the history is substantially related to the circumstances of a particular job or if employment depends on the bondability of the individual and the individual may not be bondable due to his or her credit rating.

S.B. 275 as currently drafted defines "credit history" as "information provided in a consumer report, as defined in the FCRA. We feel that this definition is overly broad in that there are differences in consumer reports and credit reports and this bill would prohibit both types of reports being used for employment screening.

Equifax opposes SB 275 as it would restrict the use of credit reports and consumer reports for employment screening purposes.

Existing Laws Regulate the Use of Consumer Reports for Employment Purposes

Existing law tightly regulates the use of consumer reports in employment situations. Under current law:

- Prior to requesting a consumer credit report, an employer must obtain the written consent of the prospective employee.
- The employer must provide a written notice stating the source of the information and how it will be used.
- If adverse action is going to be taken, the employer must also provide a copy of the consumer credit report to the consumer upon request, prior to taking an adverse action and explain the reason for the action.

Credit Report Facts:

- Credit reports do not contain a consumer's race, gender, religion, creed, color, or national origin.
- Credit scores are not provided to employers for employment decisions.

Consumer Report Facts:

- Consumer reports may include information such as income verification, employment verification, personal references, driving records and address verification.

The Need for Credit Histories in Employment Screening:

Employers use services of a background check or credit check in order to obtain the most accurate picture of the potential employee's previous work history; personal references, education, professional and other credentials; criminal history and credit history.

Consumer credit report checks are beneficial in determining whether an employee or prospective employee is a risk to financial health of a business or is a risk to the consumers who provide businesses with credit or other personal information.

Occupational Fraud Statistics

The National Retail Security Survey estimates that the U.S. retail industry lost about \$15.9 billion in 2008 due to employee theft.

Association of Certified Fraud Examiners' 2008 Report to the Nation on Occupational Fraud and Abuse found that employee financial pressures are one of the "key motivating factors of workplace fraud and theft."

- Average employee embezzlement totals more than \$125,000
- Companies lose a median of 5% of their annual revenue to employee fraud.

Important to be able to make informed decisions when selecting candidates for positions with fiduciary duties such as handling cash or sensitive credit card information, accounting, budgeting, confidential business or employee medical information. It protects the business from financial losses and exposure to legal liabilities from customers.

Low Employee Turnover - Strong Credit Report is indicative of Low Employee Turnover according to an Equifax study.

Conclusion

Thank you for listening to my points of opposition for S.B. 275. We understand that in these trying economic times it is hard for some consumers to meet their financial responsibilities, however we feel that it should be up to the employer to decide what their hiring criteria should be for their individual business.

That being said if it is the committee's desire to move forward with the bill, we want to work with the author and committee on amendments that would amend the definition of "credit history" so that the bill's intent on the restriction on credit reports would be more accurately defined and also amendments to add clearer exemptions for certain positions. The bill's current language of "substantially related" is vague and would cause confusion to the employer and possible liability.

Our trade association CDIA (which represents the three major credit reporting agencies) has drafted amendments that we think would work with the intent of the bill. These are available for the committee's review.

Thank you for your time and please let me know if I can answer any questions.



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

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Wisconsin Restaurant Association

TO: Members, Senate Committee on Labor, Elections and Urban Affairs
FROM: Andrew Cook, on behalf of the Wisconsin Civil Justice Council, Inc.
DATE: Dec. 15, 2009
RE: **OPPOSITION TO SB 275 – Prohibiting Employment Discrimination Based on Credit Histories**

The Wisconsin Civil Justice Council, Inc. (WCJC) represents business interests on emerging civil litigation challenges before the Legislature. The WCJC's primary goal is to achieve fairness and equity, reduce costs, and enhance Wisconsin's image as a place to live and work.

Senate Bill 275

Senate Bill 275 would prohibit employment discrimination based on credit history. The bill provides a narrow exception when an individual's credit history are "substantially related to the circumstances of a particular job or licensed activity" and where the employment "depends on the bondability of the individual and the individual may not be bondable due to his or her credit rating."

WCJC opposes SB 275 because it would unnecessarily expose businesses to greater liability. As explained in greater detail below, WCJC is particularly concerned that by amending Wisconsin's Fair Employment Law (Wis. Stats. §§ 111.31 – 111.395), SB 275 will further expose businesses to more lawsuits involving potentially significant punitive and compensatory damages. Moreover, the WCJC is concerned that SB 275 would impose another unnecessary limitation on Wisconsin businesses' ability to manage their workforce and compete in the current dismal economy.

SB 275 Would Unnecessarily Expose Businesses to Greater Civil Liability under Wisconsin's Fair Employment Law

The Legislature recently enacted into law Senate Bill 20 (2009 Wisconsin Act 20). For the first time, Act 20 adds punitive and compensatory damages for violations of the Wisconsin Fair Employment Law (WFEL). Prior to enactment of Act 20, the WFEL allowed an employee who was discriminated against to seek reinstatement, back pay, attorneys' fees, and costs, but did not allow an employee to sue for punitive and compensatory damages.

The WFEL, as recently amended by Act 20, now imposes punitive and compensatory damages against employers based on the number of people the business employs. Current law provides that businesses with:

- 16 to 99 employees can be sued up to \$50,000 in punitive and compensatory damages, plus court costs and attorneys' fees;
- 101 to 200 employees can be sued up to \$100,000 in punitive and compensatory damages, plus court costs and attorneys' fees;
- 201 to 300 employees can be sued up to \$200,000 in punitive and compensatory damages, plus court costs and attorneys' fees; and
- More than 300 employees can be sued up to \$300,000 in punitive and compensatory damages, plus court costs and attorneys' fees.

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(Over)

Senate Bill 275 would prohibit employment discrimination based on credit history under Wisconsin's WFEL. Thus, if SB 275 is enacted, an employer would be subjected to significant punitive and compensatory damages by simply running a credit history on a potential employee. As currently drafted, SB 275 proposes a broad protection that is different in kind from the other protected bases in the employment discrimination statute. Therefore, since credit reports do not contain information pertaining to a consumer's race, gender, religion, creed, color, or national origin, it is not clear why credit history should be protected under the WFEL.

In addition, as currently drafted, SB 275 could unnecessarily expose businesses to significant liability if they implement standard screening tools, such as salary and employment verification. Under SB 275, "credit history" means information provided in a consumer report under the federal Fair Credit Reporting Act. Under the federal law's broad definition, this type of information could be considered "information bearing on an individual's credit worthiness or credit capacity."

Therefore, we suggest the Committee amend the language to ensure that such screening tools do not expose Wisconsin businesses to the WFEL's punitive and compensatory damages.

Current Law Provides Significant Protection for the Use of Credit Reports

The federal Fair Credit Reporting Act (FCRA)¹ provides sufficient protections for job applicants in circumstances when a credit report is used for employment purposes. For example, if information from a credit report is used for employment purposes, the FCRA requires that the employer:

- Make a clear and conspicuous written disclosure to the applicant before the report is obtained, as specified, that a consumer report may be obtained;
- Obtain prior written authorization from the applicant;
- Certify to the credit reporting agency that the employer disclosed and obtained authorization to review the credit report and disclosed to the applicant that the information will not be used in violation of any federal or state equal-opportunity law or regulation, as specified; and
- Before taking an adverse action based on the credit report, provide the person with notice of the adverse decision and the name, address, and telephone number of the consumer reporting agency making the report.

In addition, the employer is required to give the employee a copy of the credit report, a summary of FCRA rights with information on how to dispute the contents of the report, and other documents as specified. Therefore, WCJC does not believe Wisconsin should adopt language that will add punitive and compensatory damages.

Conclusion

In conclusion, the WCJC opposes SB 275 because it will expose Wisconsin businesses to greater civil liability. Increased exposure to civil litigation will drive up the cost of doing business making it more difficult for Wisconsin employers to compete during these extraordinarily trying economic times.

¹ 15 U.S.C. § 1681 (see <http://www.law.cornell.edu/uscode/15/1681.html>).



WMC

WISCONSIN'S BUSINESS VOICE SINCE 1911

TO: Members of the Senate Committee on Labor, Elections
and Urban Affairs

FROM: John Metcalf, Director, Human Resources Policy

DATE: December 16, 2009

RE: Opposition to Senate Bill 275

Background

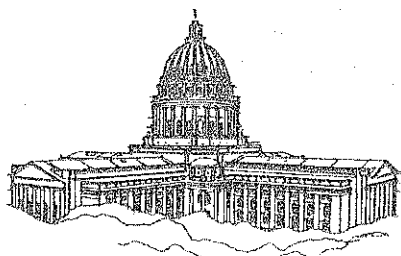
Under this bill, "credit history" means information provided in a consumer report under the federal Fair Credit Reporting Act (FCRA), which defines "consumer report" as any written, oral, or other communication by a consumer reporting agency bearing on an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is used or expected to be used as a factor in establishing the individual's eligibility for credit, insurance, employment, or any other purpose allowed under federal law.

WMC Position Oppose

The definition of "credit history" in the bill is overly broad and will severely limit legitimate inquiry into the background of job applicants.

This bill will create unnecessary administrative complexities and legal uncertainty for businesses seeking to check the credit history of job applicants. Without knowing the credit history of an applicant it will be difficult to determine whether the applicants' credit history status substantially relates to the job. Federal law simply requires applicants to be notified that a credit history report is part of the job screening process for employment, rather than a prohibition on credit history review as proposed in this legislation.

For these reasons, we respectfully request the members of the Committee not to support SB 275.



LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

Testimony of Senator Lena C Taylor
Senate Committee on Labor, Elections and Urban Affairs
Senate 275 – Employment Discrimination Based on Credit History
Tuesday, December 15, 2009

Honorable Chairman Coggs and members,

Thank you for the opportunity to testify today on Senate Bill 275 relating to: Employment Discrimination based on Credit History. This bill is the result of direct constituent contact received by Representative Hixson where employment was denied due to poor credit.

Before I explain the workings of this bill and how it relates to the employment non-discrimination statutes, let me cover the importance of this legislation in light of the economic situation of this time. Across Wisconsin, foreclosures are mounting, automobile repossessions are occurring more and more regularly, and credit card debt still saddles the majority of the middle class economy. In fact credit card debt is one of the largest financial burdens in America. At the end of 2008, the average consumer household had over \$8,000 dollars of credit card debt amounting to over 922 billion dollars of debt across America. When one of these consumers makes a payment one day late should they be denied a job? This bill is aimed at ensuring that credit history is **not** a hurdle to overcome in obtaining a job.

With the background, Representative Hixson and I put together Senate Bill 275 which acknowledges that employment discrimination has occurred when a job applicant is required to allow access to a credit report in order to obtain employment. It is appropriate that this policy is placed in the same statute with cases of discrimination for employment based on age, race, sexual orientation, and conviction record. Accordingly, this bill allows exceptions to this prohibition to employers who show that the need for the credit report is substantially related to the activities and circumstances of the job, or if the individual may not be bondable due to his or her credit rating. Some employers have expressed concern about the term "substantially related" and other particular details of the bill including the definition of "credit report" and the punitive damages section. I have had discussions with Rep. Hixson and many of the stakeholders that will offer comments on those concerns today. I am committed to addressing those concerns consistent with the intent of this bill and will be in communication with the chairman about our conversations.

Credit history and credit problems take years to reverse. In the light of the job loss and the economy, it is our charge to ensure that opportunity for employment is equal and fair, and based on merit for the position, not credit history. I urge your support of this legislation.

Thank you.

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Campaign Finance Reform, and Housing (Chair)
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